IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5611 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMJANBHAI MANGILAL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR ST MEHTA Asstt Govt Pleader for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/01/2000

ORAL JUDGEMENT

#. Heard Ms.Subhadra Patel, learned advocate for the petitioner and Mr.S.T.Mehta, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 10-4-1999 passed by

respondent No.2 - The Commissioner of Police, Ahmedabad City against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged in the present petition under Article 226 of the Constitution of India.

#. That the grounds of detention supplied to the detenu, a copy of which is produced at Annexure B discloses the fact that the prohibition case bearing No : C.R.192/99 was registered against the petitioner at Nasabandhi police station on 7-4-1999 wherein, 114 bottles of Indian made foreign liquor was seized from the petitioner. That the investigation is pending. That the two witnesses on assurance of their anonymity have given statement dated 20-3-99 and 25-3-1999 against the prejudicial activities of the petitioner. That on the basis of the said material, respondent No.2 has come to the conclusion that the petitioner is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It is also noted that the impugned order that at the relevant time, the petitioner was in judicial custody and on remand. However, the apprehension has been expressed that on completion of the remand period, the petitioner may apply for bail and having got himself released on bail, may indulge into an anti social activities and as such, the detention order is necessary.

#. It has been contended at bar that the impugned order is invalid on account of non application of mind, particularly, by non consideration of less drastic remedy regarding opposing or cancellation of bail though available under Section 437(5) of CrPC.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. That in the instant case, the impugned order itself disclosed the fact that the petitioner is in a police custody and on remand. No bail application was moved. That there is no explanation in the impugned order. That why any steps could not have been taken to oppose or claim the cancellation of bail against the petitioner under Section 437(5) of CrPC. It may also be noted that respondent No.2 has filed an affidavit in reply dated 24th December, 1999 which also does not contain any explanation for non consideration of less drastic remedy against the petitioner.

#. As the petition suceeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 10-4-1999 passed by respondent No.2 against the petitioner is hereby quashed and set aside. The petitioner Ramjanbhai Mangilal is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 10-1-2000 [A.K.Trivedi, J.]

#kailash#